* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ Arb. P. No.469 of 2006

% Date of decision: 07.05.2007

MR. JAYBIR S. BALIYAN ...PETITIONER

Through: Mr. A.K. Goel, Advocate.

Versus

INTELLIGENT COMMUNICATION SYSTEMS INDIA LTD. & ANR. ...RESPONDENTS

Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

1. Whether the Reporters of local papers may be allowed to see the judgment? No

2. To be referred to Reporter or not? No

3. Whether the judgment should be reported in the Digest? No

SANJAY KISHAN KAUL, J. (Oral)

1. The parties entered into a Memorandum of Understanding dated 1.3.2004 for jointly participating in tenders/enquiries floated by the Government/semi-Government/private/foreign bodies and for joint efforts for maintaining the telecom network. The agreement contained an arbitration clause No.8, which reads as under:

> "8. In case of any dispute, the matter will be referred to arbitrator appointed with mutual consent of parties and decision of arbitrator shall be binding on both parties.

Legal jurisdiction of the MOU will be at New Delhi."

2. It is stated in the petition that the work of laying of cables in tender No.OFC-10 awarded by Telecommunication Consultancy India Limited to the petitioner also involved the job work of laying of cables which was assigned to the petitioner. The work could not be completed due to unavoidable reasons but the respondent terminated the contract of the petitioner for laying of cables by show cause notice and letter dated 22.5.2006. The petition states that despite the aforesaid termination, the petitioner was asked to complete the work of laying of cables on Jalandhar – Amritsar route, which was done by the petitioner and the petitioner raised bills for the job done. The bills were not paid and disputes have arisen in respect thereof.

3. It is the case of the petitioner that an amount of Rs.7,30,230.65 along with interest @ 15 per cent per annum is due to the petitioner and despite notice the respondent did not remit the amount. The respondent is also stated to have encashed the bank guarantee furnished by the petitioner in terms of the Memorandum of Understanding.

4. In view of the disputes having arisen, the petitioner vide letter dated 11.8.2006 invoked the arbitration clause and suggested the name of Shri S.K. Goyal as the sole arbitrator, which was not acceptable to the respondent vide letter dated 17.8.2006. Hence the present petition has been filed.

5. The respondent entered appearance through counsel on 22.1.2007 and filed the

Power of Attorney. Four weeks time was granted to file the reply. No reply was filed when the matter was listed on 22.3.2007 and the matter has thus been placed before the Court. No reply has been filed till date. None has put an appearance for the respondent. The result is that there is no opposition to the averments made in the petition.

6. In view of the existence of the arbitration clause under the Memorandum of Understanding dated 1.3.2004 and disputes having arisen as set out in the petition by the petitioner, the same are liable to the referred to a sole arbitrator to be appointed by the Court.

7. In view of the aforesaid, I appoint Shri H.P. Sharma, Additional District Judge (Retd.) as the sole arbitrator to enter upon reference and adjudicate the disputes between the parties. The arbitrator will fix the sitting fee subject to a maximum fee of Rs.60,000.00 apart from out of pocket expenses to be borne equally by both the parties. In case the respondent does not attend the proceedings or does not pay the fee, the petitioner shall initially pay the fee, which shall form a part of the main cause.

8. Petition stands disposed of.

MAY 07, 2007 SANJAY KISHAN KAUL, J.
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